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EXAMINER

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3622

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/444,774
Filing Date: November 22, 1999
Appellant(s): MIKURAK, MICHAEL G

MAILED
FEB 16 2007
GROUP 3600

David A. Prange
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed 11/17/2006 appealing from the Office action mailed 11/17/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

6,167,378	Webber	12-2000
6,289,385	Whipple	9-2001
6,373,498	Abgrall	4-2002
5,991,735	Gerace	11-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 70, 73-81, 87, 90-98, 104, 107-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber (6,167,378) in view of Whipple (6,289,385).

Claim 70, 87, 104: Webber discloses a method, system, medium for a first business entity to provide installation management in a network based supply chain framework between at least two other independent business entities such as service providers, vendors, resellers, manufacturers and the like, comprising:

causing a first business entity using a network to (col 6, lines 13-24; Fig. 4; col 19, lines 9-26):

- (a) receive information including information relating to a service provided by a service provider from the service provider (col 6, lines 60-67; Fig. 4; col 1, lines 12-17; col 19, lines 9-26);
- (b) receive information including information relating to manufacturer offerings by a manufacturer from the manufacturer (col 6, lines 60-67; Fig. 4; col 19, lines 9-26);

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(c) use the information provided by the service provider and the manufacturer to match the service to the offerings (col 6, lines 62-64; Fig. 4; col 2, lines 34-36; col 8, line 65-col 9, line 17; col 9, lines 47-52; col 19, lines 9-26).

Webber does not explicitly disclose that the service and manufacturer offerings information is utilized to manage installations.

However, Webber discloses installations (col 16, lines 20-25) computer service providers (col 6, lines 13-23) and that the information can be utilized to manage a wide range of relations between manufacturers, service providers, and clients (col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54; col 17, lines 24-31).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to that Webber's contracts management matching and managing method can involve contracts involving installation management. One would have been motivated to do this because installation management is an obvious form of contracts managements that involves several parties.

Webber further discloses that his invention is oriented towards project management that can include a wide variety of entities (col 3, lines 60-65; col 14, lines 47-55). Webber further discloses complex management across numerous companies that also includes supply chain management (col 21, lines 25-37). Examiner further notes that installation management is a type of project management.

Webber does not explicitly disclose that the first business entity is a framework manager.

However, Whipple discloses an event manager or global collaboration manager that coordinates all aspects of project management and framework management (col 2, lines 50-60;

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Fig. 2; col 3, lines 16-23; col 4, lines 33-51). Whipple further discloses that the project management can include numerous aspects of managing complex multi-enterprise projects (col 12, lines 30-60) and that the types of project that can be managed is highly flexible (col 15, lines 5-17) and that framework management has numerous aspects to it (col 17, lines 45-60). Whipple further discloses supply chain management (col 1, lines 26-31).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Whipple's framework manager to Webber's first business entity in project management. One would have been motivated to do this in order to expand the flexibility and extensiveness of the project management that Webber discloses.

Webber further discloses that the business entities and parties involved, including project management, utilize the Internet (Fig. 1, Fig. 2).

Webber discloses that a wide variety of business entities are involved, (Fig. 1, Fig. 2) including various businesses, services, contracts, parties (col 3, lines 59-68)

Webber further discloses matching buyers of goods or services with suppliers of goods or services, the matching of proposals (col 20, lines 15-21; col 7, lines 27-40; col 20, lines 29-43).

Webber further discloses using and evaluating the information provided by the service provider via the network and the manufacturer to match the service to the offerings (col 20, lines 15-21; col 20, lines 29-43).

Note that Webber's matching of a service request with the information on suppliers, goods, and services is evaluating which supplier, good, or service is an appropriate or possible match with the service request. Also, note that the evaluation can include cost information (col 20, lines 50-65; col 20, lines 21-30). Note that it would be obvious for Webber to include the

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provided price information when evaluating which match to inform the user of. Webber would be motivated to do this in order to reduce cost to the user.

Additionally, Webber discloses taking into account cost as a factor (col 3, lines 40-43; col 4, lines 1-5; col 4, lines 37-43; col 17, lines 52-64; col 19, lines 45-55) and other requirements (col 6, lines 30-37; col 20, lines 50-65).

Webber further discloses a third party (EFT) managing interactions between different companies (col 12, lines 11-25).

Webber further discloses that the managing is done by an independent third party (col 6, lines 12-28; Fig. 9) between a wide variety of entities (col 1, lines 5-45).

Webber further discloses establishing a supply chain (col 20, lines 15-21; col 7, lines 27-40; col 20, lines 29-43; col 6, lines 12-28; Fig. 9; col 1, lines 5-45).

Whipple further discloses planning a supply chain (col 1, lines 31-65). Planning and establishing a supply chain are related in goals and objects.

Additionally, Webber discloses utilizing a third party (col 6, lines 13-24; Fig. 2, item 260; col 14, lines 4-11).

Whipple discloses utilizing a third party (Fig. 18, item 160, 162; col 17, lines 40-45).

Additionally, Webber discloses planning (col 13, lines 5-10).

Whipple discloses planning (col 1, lines 27-31).

Webber further discloses managing collaboration between the matched service provider and the manufacturer by facilitating the transmitting of information between the matched service provider and the manufacturer (col 19, lines 9-26).

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Webber further discloses providing a collaborative planning tool for managing the collaboration between the matched service provider and the manufacturer (col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54).

Webber further discloses the utilization of a collaborative planning tool (col 6, lines 24-28; col 16, lines 18-40; col 20, lines 10-15; Fig. 9; col 6, lines 13-24; Fig. 2, item 260; col 14, lines 4-11).

Additionally, Webber discloses taking into account cost as a factor (col 3, lines 40-43; col 4, lines 1-5; col 4, lines 37-43; col 17, lines 52-64; col 19, lines 45-55) and other requirements (col 6, lines 30-37).

Claim 73, 90, 107: Webber and Whipple disclose a method as recited in claim 70, and Webber further discloses the first business entity using the network to: facilitate milestone-based project planning between the matched service provider and the manufacturer (col 17, lines 24-31; col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54).

Claim 74, 91, 108: Webber and Whipple disclose a method as recited in claim 70, and Webber further discloses the first business entity using the network to: display the manufacturer offerings of the matched manufacturer to the matched service provider using the network, and display the services provided by the matched service provider to the matched manufacturer (col 19, lines 9-26).

Claim 75, 92: Webber and Whipple disclose a method as recited in claim 70, and Webber further discloses that the information of the manufacturer includes information relating to the availability of the manufacturer offerings (col 20, lines 15-30; col 20, lines 50-65).

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Claim 76, 93, 109: Webber and Whipple disclose a method as recited in claim 75, and Webber further discloses the first business entity using the network to: notify the service provider of the availability of the manufacturer offerings that match a service installation (col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54; col 17, lines 24-31).

Claim 77, 94, 110: Webber and Whipple disclose a method as recited in claim 72 for milestone-based project planning during installation management in a network-based supply chain environment, and Webber further discloses:

- (a) displaying on a display a pictorial representation of an existing service including a plurality of components (col 4, lines 60-61; col 8, lines 41-51; col 11, lines 28-34; col 14, lines 40-44);
- (b) presenting on the display a first set of components that are to be delivered for an installation in a first phase by indicia coding the first set (col 17, lines 24-31); and
- (c) presenting on the display a second set of components of the installation that are to be delivered for the installation in a second phase (col 17, lines 24-31; col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54).

Webber does not explicitly disclose that different indicia are used for different phases of the project.

Webber further discloses project management (col 3, lines 60-65; 14, lines 48-54), scheduling (col 17, lines 24-31), and customized display formats (col 16, lines 19-47) in order to streamline processes (col 16, lines 14-47). Webber further discloses custom symbols in order to make a document easier to read and utilize (col 16, lines 33-36).

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However, Webber further discloses project management (col 3, lines 60-65; 14, lines 48-54), scheduling (col 17, lines 24-31), and customized display formats (col 16, lines 19-47) in order to streamline processes (col 16, lines 14-47). Webber further discloses custom symbols in order to make a document easier to read and utilize (col 16, lines 33-36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Webber's utilization of symbols or indicia to Webber's project management. One would have been motivated to do this because indicia or symbols allow a user an easy way to track different aspects of a project.

Claim 78, 95, 111: Webber and Whipple discloses a method as recited in claim 77.

Webber does not explicitly disclose presenting a legend which defines the indicia coding with respect to the phases of delivery of the components.

However, Webber discloses project management (col 3, lines 60-65; 14, lines 48-54), scheduling (col 17, lines 24-31), and customized display formats (col 16, lines 19-47) in order to streamline processes (col 16, lines 14-47). Webber further discloses custom symbols in order to make a document easier to read and utilize (col 16, lines 33-36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a legend to Webber's project management and the utilization of symbols in a document. One would have been motivated to do this because a legend is obvious in any document that utilizes special symbols.

Claim 79, 96: Webber and Whipple disclose a method as recited in claim 77, and Webber further discloses that the components of the existing service are selected from the group of components including security services, network services, web services, client services,

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integration capabilities, data services, directory services, management services, operation services, and developer services (col 3, lines 60-65; 14, lines 48-54; Fig. 2; Fig. 4).

Claim 80, 97: Webber and Whipple disclose a method as recited in claim 77, and Webber further discloses that the components of the existing service are selected from the group of components including commerce-related services, content related services, administration-related services, customer-related services, and education related services (col 3, lines 60-65; 14, lines 48-54; Fig. 2; Fig. 4).

Claim 81, 98: Webber and Whipple disclose a method as recited in claim 77.

Webber does not explicitly disclose that the indicia coding is selected from the group of indicia coding including texture coding, color coding, and shading coding.

However, Webber discloses customized display formats (col 16, lines 19-47) in order to streamline processes (col 16, lines 14-47). Webber further discloses custom symbols in order to make a document easier to read and utilize (col 16, lines 33-36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add texture, color, or shading Webber's documents with specialized symbols. One would have been motivated to do this because texture, color, or shading are obvious ways to make something stand out in a document and to attain the attention of a reader.

Claims 82, 83, 84, 86, 99, 100, 101, 103, 112-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber (6,167,378) in view of Whipple (6,289,385) in view of Abgrall (6,373,298).

Claim 82, 83, 84, 86, 99, 100, 101, 103, 112, 113, 114, 115: Webber and Whipple disclose a method as in claim 70. Webber further discloses installing a service (col 16, lines 20-25) and project management (col 3, lines 60-65; 14, lines 48-54) and that users can buy goods or services or make specific requests (col 20, lines 15-21).

Webber does not explicitly disclose profiling a client user.

However, Abgrall discloses a method, program, and apparatus for displaying content to a user based on a profile (Abstract and col 3, lines 28-31). Abgrall further discloses identifying a user (col 8, lines 49-51; col 3, lines 8-11; and Fig. 1), collecting information about the user wherein the information relates to the installation of a service (col 3, lines 1-8), building a profile of the user based on the collected information (col 3, lines 10-15), managing a plurality of different contents (col 2, lines 23-33), analyzing the profile and the contents in order to match attributes of the profile of the user and attributes of the contents (col 9, lines 25-55), selecting the contents which have attributes that match the attributes of the profile of the user (col 9, lines 40-42), and delivering the selected contents to the user (col 9, lines 40-42).

Abgrall further discloses that the step of analyzing the profile occurs in real time (col 9, lines 50-55 and col 10, lines 20-29).

Abgrall further discloses identifying a time when the user last viewed the contents, and indicating portions of the contents that have been modified or added since the time when the user last viewed the contents (col 3, lines 10-15; col 4, lines 26-31; col 11, lines 34-35; and col 10, lines 20-25).

Abgrall further discloses further discloses allowing the user to rate the contents (col 4, line 67-col 5, line 7 and col 10, lines 22-25).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Abgrall's profiling a client user to Webber's providing a service to a client user and allowing a client user to purchase goods or services. One would have been motivated to do this because profiling a client user who makes requests or purchases goods or services increases the likelihood of more efficient sales of goods or services to the client user.

Claim 85, 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber (6,167,378) in view of Whipple (6,289,385) in view of Abgrall (6,373,498) in view of Gerace (5,991,735).

Claim 85, 102: Webber, Whipple, and Abgrall disclose a method as in claims 82. Abgrall further discloses that the user is identified by receiving user input (col 4, line 67-col 5, line 7 and col 10, lines 22-25) and that digital signatures are used (col 9, lines 3-11).

Abgrall further discloses profiling the user utilizing a variety of means (col 3, lines 1-15), utilizing a website and downloaded software to assist in the user identification and profiling (col 4, lines 20-27; col 4, line 65-col 5, line 6), and that the system can utilize the Internet and websites (col 2, lines 35-45; col 2, lines 22-26).

Abgrall does not explicitly disclose the use of cookies to identify a user.

However, Gerace discloses identifying a user and his preferences using cookies (col 13, line 59- col 14, line 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Gerace's utilization of cookies to Abgrall's user profiling and content delivery method, program, and system. One would have been motivated to do this so that Abgrall can track users utilizing a method common to the industry that provides

ease of management when interacting with the Internet.

(10) Response to Argument

Examiner notes that the combination of the prior art renders obvious the features of the Appellant's independent claim 70.

In reference to independent claim 70, the combination of the prior art renders obvious:
causing a framework manager using a network to:

(a) receive information via the network including information relating to a service provided by a service provider from the service provider (Webber; col 6, lines 60-67; Fig. 4; col 19, lines 9-26; col 1, lines 12-17);

(b) receive information via the network including information relating to manufacturer offerings by a manufacturer from the manufacturer (Webber; col 6, lines 60-67; Fig. 4; col 19, lines 9-26);

(c) use and evaluate the information provided by the service provider via the network and the manufacturer to match the service to the offerings, evaluating factors that include cost and service provider requirements (Webber; Fig. 4; col 19, line 9-26; col 9, lines 47-52; col 20, lines 29-43; col 8, lines 65-col 9, line 17) [also, note that cost can be one of the factors evaluated: Webber; col 20, lines 21-30; col 20, lines 50-65; col 3, lines 40-43; col 4, lines 1-5; col 4, lines 37-43; col 17, lines 52-64; col 19, lines 45-55]; and

(d) use the service and manufacturer offerings to manage information installations through the use of a collaborative planning tool which facilitates the transfer of the information received from the service provider and the information received from

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the manufacturer (Webber; col 16, lines 18-40; col 6, lines 13-28; col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54; col 17, lines 24-31; col 20, lines 10-15; Fig. 9; Fig. 2, item 260; col 14, lines 4-11).

And, the preceding is obvious in light of the rejection above.

The following is in response to the arguments presented by the Appellant in the Appeal Brief dated 11/17/2006.

B.1.i

On page 13, Appellant states, "The references fail to teach or suggest using and evaluating acquired information to match offerings to service requirements."

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Examiner further notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Examiner also notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. In re Jacobv, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. In re Bozek, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F.2d 656, USPQ 12 (CCPA 1977).

And, Webber discloses using and evaluating acquired information to match offerings to service requirements (Fig. 4; col 20, lines 29-43; col 9, lines 47-52; col 19, line 9-26; col 8, lines 65-col 9, line 17).

Note in these figures and citations that the a request for services is communicated to a seller and that this request for services from the seller is then matched with the appropriate manufacturer out of numerous manufacturers. Hence, the service request/requirements of the user is used to match the appropriate seller with the appropriate manufacturer who can fulfill the request. Also, note that the CAP of Figure 4 is utilized to make this comparison, evaluation, and matching.

Also, note from these citations that the using and evaluating acquired information to match offerings to service requirements are performed by Webber (Fig. 4 and below citations):

“(97) The CAP optionally has stored a master directory, which contains information on suppliers, goods and services not otherwise listed in the system, and a contact address for the suppliers. When a product or services is requested that is not otherwise listed in the system, the CAP accesses the

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stored master directory, locates the requested good or service, and contacts the supplier by generating an automatic notification. Where the supplier's contact address is accessible electronically or via facsimile, the notification is delivered to the electronic address or facsimile number. If, on the other hand, the supplier's contact address is not accessible electronically, the CAP generates a hard copy which is manually mailed to the address or a telephone call is performed (col 20, lines 29-43).

(31) A digital contract is "executed" by any acceptable means, including digital signature or automatic ratification. A digital contract may be for one or more products, goods, or services between individual parties. A contract for an entity to supply specific goods or services is linked to another contract for another entity to acquire those specific goods or services (col 9, lines 47-52).

(89) FIG. 8 more fully illustrates a supply chain for a given product. The supply chain for particular products may be different. Each supply chain may include as parties sellers, local wholesalers, district and regional distributors, manufacturing warehouses, manufacturers, suppliers to manufacturers, their respective shippers and their respective financial institutions. Since the contracts for the various parties in the supply chain have previously been stored and authorized, once party A initiates an event such as a PO, each contract for each preceding party, shipper and bank is automatically linked to the next contract. This automation is substantially simultaneous and error free, since there is the advantage that human intervention is not required. of course, a contract could be drafted so that human intervention is required, for example to authorize the transaction. A goal would be to fully integrate the entire supply chain for all products so that all business can be automated and streamlined" (col 19, lines 9-26).

Also, note that in these citations preceding that Webber (col 20, lines 29-43) discloses information on the various parties involved, that a request for services comes in, the request for service is evaluated and the appropriated service provider is chosen and matched with the request.

B.1.ii

On page 16, Appellant states, "The references fail to teach or suggest management of installations."

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As noted in the rejection above, Webber does not explicitly disclose that the service and manufacturer offerings information is utilized to manage installations.

However, Webber discloses installations (col 16, lines 20-25) computer service providers (col 6, lines 13-23) and that the information can be utilized to manage a wide range of relations between manufacturers, service providers, and clients (col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54; col 17, lines 24-31).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to that Webber's contracts management matching and managing method can involve contracts involving installation management. One would have been motivated to do this because installation management is an obvious form of contracts managements that involves several parties.

Webber further discloses that his invention is oriented towards project management that can include a wide variety of entities (col 3, lines 60-65; col 14, lines 47-55). Webber further discloses complex management across numerous companies that also includes supply chain management (col 21, lines 25-37). Examiner further notes that installation management is a type of project management. Also, Examiner notes that Appellant's claims present no special features regarding installation management as opposed to other types of project management. Appellant presents no special features in the claims that distinguish what installation management is. Hence, installation management can be broadly interpreted.

B.1.iii

On page 17, Appellant states, "The references fail to teach or suggest use of a

collaborative planning tool.”

However, Webber further discloses providing a collaborative planning tool for managing the collaboration between the matched service provider and the manufacturer (col 19, lines 9-26; col 3, lines 60-65; col 14, lines 48-54).

Webber further discloses the utilization of a collaborative planning tool (col 6, lines 24-28; col 16, lines 18-40; col 20, lines 10-15; Fig. 9; col 6, lines 13-24; Fig. 2, item 260; col 14, lines 4-11).

Also, Webber discloses planning (col 13, lines 5-10).

Whipple discloses planning (col 1, lines 27-31).

B.2.

On page 18, Appellant states, “There Is No Suggestion Or Motivation To Combine Webber and Whipple.”

Examiner notes that the person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955,962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986).

In determining this skill level, the court may consider various factors including "type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field." *Id.*, cited in *In re GPAC*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995). In a given case, every factor may not be present, and one or more factors may predominate. *Id.* at 962-63, 1 USPQ2d at 1201.

Also, Examiner notes the requirement of a showing of a "teaching, suggestion, or motivation" to modify or combine the prior art teachings. This requirement was recently described in *In re Kahn*, 441 F.2d 977, 78 USPQ2d 1329 (Fed. Cir. 2006):

[T]he "motivation-suggestion-teaching" test asks not merely what the references disclose, but whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims. From this it may be determined whether the overall disclosures, teachings, and suggestions of the prior art, and the level of skill in the art- i.e.; the understandings and knowledge of persons having ordinary skill in the art at the time of the invention- support the legal conclusion of obviousness. (internal citations omitted). *Id.* at 988, 78 USPQ2d at 1337.

"In considering motivation in the obviousness analysis, the problem examined is not the specific problem solved by the invention but the general problem that confronted the inventor before the invention was made." *Kahn*, 441 F.3d at 988, 78 USPQ2d at 1336 (citations omitted).

To establish a prima facie case of obviousness, the references being combined do not need to explicitly suggest combining their teachings. See e.g., *In re Johnston*, 435 F.3d 1381, 1385, 77 USPQ2d 1788, 1790-91 (Fed. Cir. 2006) (citing *Medical Instrumentation and Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1221-22 (Fed. Cir. 2003)) ("[t]he suggestion or motivation to combine references does not have to be stated expressly; rather it may be shown by reference to the prior art itself, to the nature of the problem solved by the claimed invention, or to the knowledge of one of ordinary skill in the art."); and *Kahn*, 441 F.3d at 987-88, 78 USPQ2d at 1337-38 ("the teaching, motivation, or suggestion may be implicit from the prior art

as a whole, rather than expressly stated in the references").

In fact, an explicit teaching that identifies and selects elements from different sources and states that they should be combined in the same way as in the invention at issue, is rarely found in the prior art. *Johnston*, 435 F.3d at 1385, 77 USPQ2d at 1790-91. As such, the prior art may explicitly or implicitly suggested the claimed combination. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *Kahn*, 441 F.3d at 987-88, 78 USPQ2d at 1336 (quoting *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)).

And, in this case, Webber and Whipple disclose project management features. And, Whipple provides obvious extension of the project management capabilities of Webber. Please see the rejection above.

C.

On page 19, Appellant states, in regards to dependent claims 73, 90, and 107, "Appellant respectfully disagrees with this characterization as Webber fails to teach or suggest the use of milestone-based project planning."

However, as noted in the response for B.1.iii above, Webber in view of Whipple discloses extensive project planning features. And, Webber discloses project planning with specific time periods and time frames where goals and/or objectives must be met (col 17 lines 24-31; col 19, lines 55-65).

Hence, the combination of the prior art renders obvious milestone-based project planning.

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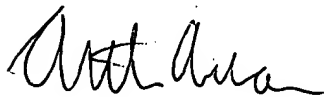
Also, in regards to footnote 2 on page 11 of the Appeal Brief, Examiner notes that all features of the Appellant's current copy of the claims were rejected in the Final Rejection. And, Examiner notes that all arguments presented in the Appeal Brief, which references the current copy of the claims, were also addressed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Arthur Duran

Primary Examiner

1/23/2007

Conferees:

Eric Stamber

Vincent Millin

